NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

Congressional Information Service, Inc.
4520 East-West Highway
Bethesda, Maryland 20814

102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 102-235
Part 2

CHEMICAL AND BIOLOGICAL WEAPONS CONTROL AND WARFARE ELIMINATION ACT OF 1991

NOVEMBER 19, 1991.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3409, which on September 25, 1991, was referred jointly to the Committee on Foreign Affairs, the Committee on Banking, Finance and Urban Affairs, the Committee on Public Works and Transportation, and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3409) to prevent the proliferation of biological and chemical weapons, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Strike line 1 on page 32 and all that follows through line 12 on page 33 and insert the following:

> (d) WAIVER.—(1) CRITERIA FOR WAIVER.—The President may waive the application of any sanction imposed with respect to a country pursuant to this section—
>
> (A) if—
>
> (i) in the case of any sanction other than a sanction specified in subsection (b)(2)(D) (relating to import restrictions) or (b)(2)(E) (relating to the downgrading or suspension of diplomatic relations), the President determines and certifies to

H783-22

the Congress that such waiver is essential to the national security interests of the United States, and if the President notifies the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect, in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, or

(ii) in the case of any sanction specified in subsection (b)(2)(D) (relating to import restrictions), the President determines and certifies to the Congress that such waiver is essential to the national security interest of the United States, and if the President notifies the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of his determination and certification at least 15 days before the waiver takes effect; or

(B) if the President determines and certifies to the Congress that there has been a fundamental change in the leadership and policies of the government of that country, and if the President notifies the Congress at least 20 days before the waiver takes effect.

(2) REPORT.—In the event that the President decides to exercise the waiver authority provided in paragraph (1) with respect to a country, the President's notification to the Congress under such paragraph shall include a report fully articulating the rationale and circumstances which led the President to exercise that waiver authority, including a description of the steps which the government of that country has taken to satisfy the conditions set forth in paragraphs (1) through (4) of subsection (c).

BACKGROUND AND PURPOSE, INCLUDING REASONS FOR CHANGE

The recent U.S. war against Iraq and the accompanying concerns over possible use of chemical and biological weapons against U.S. troops; coupled with more recent revelations about Iraq's efforts to develop chemical and biological weapons (CBW) underscore the need to enhance U.S. and international efforts to prevent the proliferation of such weapons. Iraq is not alone in its efforts to produce weapons of mass and indiscriminate destruction and the means to deliver them. Other countries in the Middle East and elsewhere have been making similar efforts to amass CBW. These efforts fly in the face of the strong consensus that emerged in much of the world community in the years following World War I that the development and use of CBW should be strictly controlled. That consensus stemmed from the horrors of the use of CBW during wartime. More recently, international efforts have aimed at preventing the proliferation of CBW and seeking to ensure that such weapons would never be used, whether against civilians or soldiers.

The purpose of H.R. 3409 is to establish a framework for controlling the proliferation of CBW. That framework includes provisions intended to strengthen U.S. and multilateral export controls and to impose sanctions against foreign persons and countries which engage in the proliferation or use of CBW.

COMMITTEE ACTION

H.R. 3409 was introduced on September 25, 1991, and referred jointly to the Committees on Ways and Means, Foreign Affairs, and two other committees. On September 26, 1991, the Committee on Foreign Affairs ordered the bill favorably reported, with an amendment. On November 19, 1991, the Committee on Ways and Means ordered H.R. 3409 favorably reported, by voice vote, with an amendment.

With the exception of provisions relating to import sanctions, H.R. 3409 as introduced is identical to a title of S. 1433, the Department of State authorization bill. House and Senate conferees on that bill and its House companion measure, H.R. 1415 (which contained no CBW provisions) had sought on September 24, 1991, to broaden the CBW sanctions provision in S. 1433 to include import sanctions. The Committee on Ways and Means objected, in part on the grounds that the provision had not been considered by the House of Representatives in the 102nd Congress. H.R. 3409 was introduced as a free-standing CBW measure, in order to allow all committees of jurisdiction the opportunity to consider the legislation and its implications.

SECTION-BY-SECTION ANALYSIS AND COMPARISON WITH PRESENT LAW

The Committee on Ways and Means considered only those provisions within its jurisdiction—sections 5 and 7. This report discusses those sections only.

PRESENT LAW

There are no provisions of present law which specifically authorize the President to impose sanctions against foreign persons or countries engaged in CBW activities.

EXPLANATION OF PROVISIONS

Section 5. Sanctions against certain foreign persons

Section 5 applies to any foreign person the President determines has knowingly and materially contributed to efforts by certain countries, projects, or entities to use, develop, produce, stockpile, or acquire chemical or biological weapons. It also applies to any successor entity of that foreign person and to certain other specified related parties who knowingly assisted the person. Upon making a determination that a foreign person has engaged in such activity, the President is required to impose sanctions against the foreign person for at least 12 months, after which sanctions may be waived, subject to certain conditions. The sanctions which must be applied are a ban on government procurement and a ban on imports of products produced by the foreign person. Specified exceptions to the sanctions are provided (e.g., if the foreign person is the

sole source supplier of a product, or the foreign government of jurisdiction imposes appropriate penalties).

Section 7. Sanctions against use of chemical or biological weapons

Section 7 applies to the government of any foreign country which the President determines has used, or made substantial preparations to use, chemical or biological weapons in violation of international law or against its own nationals. A two-tier sanctions regime is established. Upon making a determination, the President must impose immediately a range of sanctions relating to U.S. Government activity (e.g., foreign assistance and export credits). If, after 3 months, the President cannot certify that the foreign government has ceased its CBW activities; has provided assurances that it will not use CBW; is willing to allow on-site inspections; and is making restitution to those affected by its use of CBW, then the President must impose at least 3 of 6 specified sanctions, including possible import sanctions. Sanctions must remain in place at least 12 months, after which they may be removed if the President certifies that the government meets the conditions spelled out above.

The President may waive the application of any sanction against a country if he determines it is essential to U.S. national security interests. However, in the case of sanctions other than import sanctions, the President must notify the Committees on Foreign Affairs and Foreign Relations at least 15 days before the waiver takes effect. In the case of import sanctions, the President must notify the Committees on Ways and Means and Finance within the same time frame. The President also may waive country sanctions if he determines there has been a fundamental change in the leadership and policies of the foreign government concerned.

Finally, section 7 provides contract sanctity for contracts and agreements entered into before sanctions are imposed, subject to certain limitations.

Matters Required To Be Discussed Under the Rules of the House

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill: H.R. 3409 was ordered favorably reported without amendment by the Committee, by voice vote.

OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives relating to oversight findings, the Committee, based on extensive discussions with Members and staff of the Committee on Foreign Affairs, including a review of documents and materials prepared by them, recommends that the House approve H.R. 3409, as amended.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on

Government Operations with respect to the subject matter contained in the bill.

BUDGETARY AUTHORITY AND COST ESTIMATES, INCLUDING ESTIMATES OF THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that there are no tax expenditures or new budgetary authority providing financial assistance to State and local governments in the bill.

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee agrees with cost estimates furnished by the Congressional Budget Office on H.R. 3409 and required to be included herein:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 19, 1991.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3409, the Chemical and Biological Weapons and Warfare Elimination Act of 1991, as ordered reported by the House Committee on Ways and Means on November 19, 1991. Enactment of the legislation is estimated to result in no significant cost to the federal government and in no costs to state and local governments. Enactment of H.R. 3409 would not affect direct spending on receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 3409 would call for multilateral efforts to control the proliferation of chemical and biological weapons. The bill would amend the Export Administration Act and the Arms Export Control Act to strengthen controls on the export from the United States of goods and technology that would assist foreign governments or groups to develop such weapons. It would direct the Secretary of Commerce to create a list of goods and technology that would both enable a foreign group to manufacture or deliver chemical or biological weapons, and could be effectively embargoed through licensing. The bill also would direct the Secretary to require a license for listed goods or technology for their export to certain countries. Further, H.R. 3409 would require the President to impose sanctions against any foreign person who exports from any country listed goods or technology for the purpose of enabling certain countries to produce or deliver chemical or biological weapons. CBO expects that these requirements would not add significantly to the workload of the Department of Commerce.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John Webb, who may be reached at 226-2860, and Joseph Whitehill, who may be reached at 226-2840.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

INFLATIONARY IMPACT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 3409 would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EXPORT ADMINISTRATION ACT OF 1979

* * * * * * *

FOREIGN POLICY CONTROLS

SEC. 6. (a) * * *

* * * * * * *

(m) CHEMICAL AND BIOLOGICAL WEAPONS.—

(1) ESTABLISHMENT OF LIST.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would directly and substantially assist a foreign government or group in acquiring the capability to develop, produce, stockpile, or deliver chemical or biological weapons, the licensing of which would be effective in barring acquisition or enhancement of such capability.

(2) REQUIREMENT FOR VALIDATED LICENSES.—The Secretary shall require a validated license for any export of goods or technology on the list established under paragraph (1) to any country of concern.

(3) COUNTRIES OF CONCERN.—For purposes of paragraph (2), the term "country of concern" means any country other than—

(A) a country with whose government the United States has entered into a bilateral or multilaterial arrangement for the control of goods or technology on the list established under paragraph (1); and

(B) such other countries as the Secretary of State, in consultation with the Secretary and the Secretary of Defense, shall designate consistent with the purposes of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

[(m)**]** *(n)* CRIME CONTROL INSTRUMENTS.—(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license. Notwithstanding any other provision of this Act—

(A) any determination of the Secretary of what goods or technology shall be included on the list established pursuant to subsection (1) of this section as a result of the export restric-

tions imposed by this subsection shall be made with the concurrence of the Secretary of State, and

(B) any determination of the Secretary to approve or deny an export license application to export crime control or detection instruments or equipment shall be made in concurrence with the recommendations of the Secretary of State submitted to the Secretary with respect to the application pursuant to section 10(e) of this Act,

except that, if the Secretary does not agree with the Secretary of State with respect to any determination under subparagraph (A) or (B), the matter shall be referred to the President for resolution.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961.

[(n)] *(o)* CONTROL LIST.—The Secretary shall establish and maintain, as part of the control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. The Secretary shall clearly identify on the control list which goods or technology, and which countries or destinations, are subject to which types of controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of good and technology comparable to those controlled for export from the United States under this section.

[(o)] *(p)* EFFECT ON EXISTING CONTRACTS AND LICENSES.—The President may not, under this section, prohibit or curtail the export or reexport of goods, technology, or other information—

(1) in performance of a contract or agreement entered into before the date on which the President reports to the Congress, pursuant to subsection (f) of this section, his intention to impose controls on the export or reexport of such goods, technology, or other information, or

(2) under a validated license or other authorization issued under this Act,

unless and until the President determines and certifies to the Congress that—

(A) a breach of the peace poses a serious and direct threat to the strategic interest of the United States,

(B) the prohibition or curtailment of such contracts, agreements, licenses, or authorizations will be instrumental in remedying the situation posing the direct threat, and

(C) the export controls will continue only so long as the direct threat persists.

[(p)] *(q)* EXTENSION OF CERTAIN CONTROLS.—Those export controls imposed under this section with respect to South Africa which were in effect on February 28, 1982, and ceased to be effective on March 1, 1982, September 15, 1982, or January 20, 1983, shall become effective on the date of the enactment of this subsection, and shall remain in effect until 1 year after such date of enactment. At the end of that 1-year period, any of those controls made effective by this subsection may be extended by the President in accordance with subsections (b) and (f) of this section.

[(q)] *(r)* EXPANDED AUTHORITY TO IMPOSE CONTROLS.—(1) In any case in which the President determines that it is necessary to impose controls under this section without any limitation contained in subsection (c), (d), (e), (g), (h), or (m) of this section, the President may impose those controls only if the President submits that determination to the Congress, together with a report pursuant to subsection (f) of this section with respect to the proposed controls, and only if a law is enacted authorizing the imposition of those controls. If a joint resolution authorizing the imposition of those controls is introduced in either House of Congress within 30 days after the Congress receives the determination and report of the President, that joint resolution shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate and to the appropriate committee of the House of Representatives. If either such committee has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution.

(2) For purposes of this subsection, the term "joint resolution" means a joint resolution the matter after the resolving clause of which is as follows: "That the Congress, having received on a determination of the President under section 6(o)(1) of the Export Administration Act of 1979 with respect to the export controls which are set forth in the report submitted to the Congress with that determination, authorizes the President to impose those export controls.", with the date of the receipt of the determination report inserted in the blank.

(3) In the computation of the periods of 30 days referred to in paragraph (1), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

[(r)] *(s)* SPARE PARTS.—(1) At the same time as the President imposes or expands export controls under this section, the President shall determine whether such export controls will apply to replacement parts for parts in goods subject to such export controls.

(2) With respect to export controls imposed under this section before the date of the enactment of this subsection, an individual validated export license shall not be required for replacement parts which are exported to replace on a one-for-one basis parts that were in a good that was lawfully exported from the United States,

unless the President determines that such a license should be required for such parts.

* * * * * * *

CHEMICAL AND BIOLOGICAL WEAPONS PROLIFERATION SANCTIONS

SEC. 11C. (a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—(A) Except as provided in subsection (b)(2), the President shall impose both the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States under this Act, or

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States under this Act,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of this Act to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHICH SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATION WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply to a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

* * * * * * *

ARMS EXPORT CONTROL ACT

* * * * * * *

CHAPTER 8—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

SEC. 81. SANCTIONS AGAINST CERTAIN FOREIGN PERSONS.

(a) IMPOSITION OF SANCTIONS.—

(1) DETERMINATION BY THE PRESIDENT.—(A) Except as provided in subsection (b)(2), the President shall impose both of the sanctions described in subsection (c) if the President determines that a foreign person, on or after the date of the enactment of this section, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979,

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) COUNTRIES, PROJECTS, OR ENTITIES RECEIVING ASSISTANCE.—Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405(j)) to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) PERSONS AGAINST WHOM SANCTIONS ARE TO BE IMPOSED.—Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) CONSULTATIONS WITH AND ACTIONS BY FOREIGN GOVERNMENT OF JURISDICTION.—

(1) CONSULTATIONS.—If the President makes the determinations described in subsection (a)(1) with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) ACTIONS BY GOVERNMENT OF JURISDICTION.—In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1). The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1), on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) SANCTIONS.—

(1) DESCRIPTION OF SANCTIONS.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, the following:

(A) PROCUREMENT SANCTION.—The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3).

(B) IMPORT SANCTIONS.—The importation into the United States of products produced by any person described in subsection (a)(3) shall be prohibited.

(2) EXCEPTIONS.—The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) TERMINATION OF SANCTIONS.—The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) WAIVER.—

(1) CRITERION FOR WAIVER.—The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) NOTIFICATION OF AND REPORT TO CONGRESS.—If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) DEFINITION OF FOREIGN PERSON.—For the purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

ADDITIONAL VIEWS OF CONGRESSMAN PETE STARK

The bill before us puts sanctions on foreign companies which sell chemical or biological weapons technology to countries of concern. For example, if a Belgian company sells a chemical weapons plant to Libya, then that company would be barred from selling anything in the United States and could not contract with the U.S. Government.

This is a good bill, but it should do more. Why are we not putting import sanctions on companies that sell nuclear weapons technology? Are nuclear weapons less dangerous than chemical weapons? It doesn't make any sense not to include nuclear weapons.

From the UN inspections in Iraq, we know that Western companies sold plenty of nuclear weapons technology to Saddam Hussein. In addition, from published sources I have compiled a long list of foreign firms that helped Saddam in efforts to build the bomb.

The attached chart diagrams a high-speed gas centrifuge. These centrifuges are used to enrich uranium. Enriched uranium is used to build nuclear bombs. This chart shows how foreign companies helped Iraq design and build centrifuges by supplying component parts.

It's not just Iraq, either. Iran has its own clandestine program and network of suppliers. For years the German conglomerate Siemen's has talked of supplying a nuclear reactor to the Iranians. Algeria, Libya, and Syria cannot be ignored. And also Pakistan, South Africa, India, Argentina, Israel—they don't build their bombs on their own, they build them with the help of companies in Europe, America, and Japan. We closed our eyes to Iraq. Let's open them wide now and send a strong message to these proliferation profiteers.

I had hoped to offer an amendment today to make the import sanctions fall on companies that sell nuclear weapons technology as well. For procedural reasons, I am not going to offer that amendment today.

It is my hope that the committee will take up this issue forcefully in the next year and enact tough import sanctions against foreign companies that help the Saddams of the world build the bomb.

Countries like Libya, Iran, Syria, and Iraq all support terrorist groups—groups that do things like blow up airplanes. In the future, these groups might blow up entire cities. It would only take a primitive nuclear weapon smuggled in by a terrorist group to destroy most of Washington, D.C. Perhaps after that, a reconstituted Congress might finally agree to consider holding hearings on import sanctions for nuclear proliferators.

Mr. Chairman, I thank you for your support and work on the Chemical and Biological Weapons Control Act.

PETE STARK.

APPENDIX

Proliferation Profiteers—Foreign Companies That Sold Nuclear Weapons Technology to Iraq

Numerous foreign firms have fueled Iraq's nuclear weapons program. The companies listed below reportedly helped Iraq to acquire enriched uranium—a core element of a nuclear bomb. The firms supplied Iraq with key components to build a gas centrifuge facility to enrich uranium. Gas centrifuges increase or "enrich" the small percentage of uranium 235 found in natural uranium ore (U-238). Uranium enriched beyond 90 percent is considered weapons grade and suitable for the manufacture of nuclear arms. A centrifuge works by passing gasified uranium (UF6) into a rotor spinning at 40-50,000 rpm. Small differences in the molecular weight between the two isotopes of uranium allows their separation. High speed centrifuge rotors must be precisely constructed of special materials (such as noncorrosive maraging steel) and rotate in a vacuum using magnetic bearings to reduce friction. Thousands of centrifuges must then be linked together in cascades to produce usable quantities of U-235.

GAS CENTRIFUGE FOR URANIUM ENRICHMENT

Centrifuge design

Employees of Man Technologien (German firm).

Maraging steel and production equipment for centrifuge rotors

Export-Union (German firm); H&H Metalform (German firm); Matrix-Churchill (British firm); Saarstahl (German firm); Schmiedemeccanica (Swiss firm); Usinor-Sacilor (British firm).

Vacuum pumps and valves

Gachot (French firm); Leybold (German firm); VAT (Liechtenstein firm).

Magnetic bearing

H&H Metalform (German firm); Inwako (German firm); Swift-Levick (British firm).

Endcaps and baffles

Schiedemeccanica (Swiss firm).

Endcap production equipment

Schaeublin (Swiss firm).

Power supply

Kavo (German firm).

○